IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 277 of 2006

Archana Sharma
D/o Late Rajendra Prasad
R/o Village Gujrada, Police Station Rajpur
District – Dehradun .....Applicant

Versus

1. State of Uttaranchal

   Through Home Secretary Uttaranchal, Dehradun

2. Smt. Maya Devi
   W/o Late Rajendra Prasad Sharma
   R/o Village Daudwala, Mohalla Mathurawala
   Police Station Claimantown,
   District – Dehradun ...Respondents

Shri Vinod Sharma, learned counsel for the petitioner.
Shri Nandan Arya, learned G.A. for the State

Hon'ble J. C. S. Rawat, J.

This present petition has been filed u/s 482 Cr.P.C. to set aside the order dated 30.05.2005 passed by the Judicial Magistrate, Dehradun in Case No. 463 of 2004 State Vs. Maya Devi and order dated 18.07.2005 passed in Criminal Revision No. 91 of 2005.

Brief facts for the disposal of this petition are that an F.I.R. was lodged u/s 420, 468, 471 and 120-B I.P.C. at Police Station Dalanwala, District-Dehradun. The chargesheet was submitted against Maya Devi. During the trial te applicant was examined as PW-1 and Madan Lal was examined as PW-2 before the trial court. The further cross of the witnesses had been differed by the court. The applicant-complainant of the case filed the application before the trial court that the Principal of Mathurawala Primary School, Smt. Satayawati had conspired with the accused Smt. Maya Devi-respondent No. 2 for preparing false certificate in the name of the accused Maya Devi-respondent No.2 and it was further alleged in the

application that Smt. Pushpa Khanduri had also conspired with the accused-respondent No.2 to provide her employment. It was further requested that there was sufficient evidence against them to summon as an accused. The objections were filed against the said application. The learned trial Magistrate rejected the application on the ground that there was no sufficient evidence to summon the present applicant u/s 120B I.P.C. The learned Magistrate also observed that there is no clearcut evidence against Smt. Pushpa Khanduri who is the B.S.A. that she had conspired with the applicant. The mere averment in the evidence is that the accused with the connivance of the officials of the department obtained the falos certificate. It was further observed by the learned trial court that there is no clear cut evidence against Smt. Satyawati to hatches the conspiracy with Maya Devi. The application was dismissed by the trial court. Thereafter, the revision petition was preferred and it was dismissed by the learned Sessions Judge and confirmed the order of the learned trial court.

Feeling aggrieved by the said order, the present petition has been preferred.

Heard learned counsel for the parties and peruse the record.

It was contended on behalf of the applicant that the applicant-PW1 and PW2-madan Lal had specifically given the evidence about the active involvement in the conspiracy of the B.S.A. and the Principal of the School who had issued the certificate. As such there is sufficient evidence to summon the Principal-Smt. Satayawati as well as B.S.A.-Smt. Pushpa Khanduri. It was further contended that Section 319 of Cr.P.C. provides that if it appears to the court that there is involvement of the othe persons, the court may summon the accused. Learned counsel for the applicant tried to point out that the word 'appear' used in Section 319 Cr.P.C. is very significant and wide enough. The learned A.G.A. refuted the contention. Perusal of the evidence recorded by the trial court reveals that the applicant as well

as Madan Lal has stated that the B.S.A. office was involved in hatching the conspiracy. There was no specific allegation against Smt. Pushpa Khanduri, BSA. It is also in the evidence that there is vague evidence that the Principal of Mathurawala School also involved in the said conspiracy. To constitute the conspiracy, the chain of evidence must be completed. Mere vague averments are not sufficient. The word 'appears' has also been used u/s 319 of the Cr.P.C. Interpretation of the word 'appear' used u/s 319 Cr.P.C. came before the Hon'ble Apex Court reported in the case of Chandra Pal Singh Vs. State of U.P. reported in A. Cr. R, Vol. 15, 1991 p/ 228 wherein it has been held in para 4:

"It can be safely said for the purpose of summoning a person for joint trial, the court proceeding with the inquiry of the trial should confine itself to the evidence adduced before it. The evidence collected during investigation cannot be basis for summoning a person for joint trial under Section 319 (1). Then the word 'appears' occurring in this section is significant. It has been used at two places in the sub section and has same connotation. Word 'appears' does not mean 'proves', it only signifies that there is prima-facie case against the person summoned under Section 319 (1) Cr.P.C. for joint trial. The third feature of this sub-section is that the power given in the sub-section is for justice and the court can exercise this power suo moto or an application of any of the parties. Under this sub-section a court has jurisdiction to summon a person even on the application of complainant. The only pre-requisite is, it should appear from the evidence that the person sought to be summoned, not being an accused, has committed any offence for which he should be tried together with the accused."

Thus it is clear by the pronouncement of the Apex Court that there should be a prima-facie case. The accused cannot be summoned only on the basis of the suspicion. There was no prima-

facie evidence against Smt. Satayawati and Smt. Pushpa Khanduri to summon them in this case.

In view of the above observation, I am completely in agreement with the findings recorded by both the courts below. I do not find any ground for interference in this matter

Accordingly, the petition is dismissed.

All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

2nd May, 2006
Shiv